

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, : Civil Action  
 INC., :  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 BAXTER INTERNATIONAL INC. :  
 and BAXTER HEALTHCARE :  
 CORPORATION, :  
 :  
 Defendants. : No. 05-349-GMS

BAXTER HEALTHCARE :  
 CORPORATION, :  
 :  
 Counterclaimant, :  
 :  
 v. :  
 :  
 TALECRIS BIOTHERAPEUTICS, :  
 INC. and BAYER HEALTHCARE :  
 LLC, :  
 :  
 Counterdefendants.:

Wilmington, Delaware  
 Thursday, August 17, 2006  
 10:00 a.m.  
 Teleconference

BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

1 APPEARANCES:

2 JEFFREY B. BOVE, ESQ.,  
3 JACLYN MASON, ESQ., and  
4 MARY BOURKE, ESQ.  
Connolly Bove Lodge & Hutz LLP

5 -and-

6 BRADFORD J. BADKE, ESQ., and  
7 GABRIELLE CIUFFREDA, ESQ.  
8 Ropes & Gray  
9 (New York, New York)

10 Counsel for Plaintiff and  
11 Counterdefendants

12 PHILIP A. ROVNER, ESQ.  
13 Potter Anderson & Corroon LLP

14 -and-

15 JAMES G. GILLILAND, ESQ., and  
16 SUSAN M. SPAETH, ESQ.  
17 Townsend and Townsend & Crew  
18 (Palo Alto, CA)

19 Counsel for Defendants and  
20 Counterclaimant

21 - - -

22 THE COURT: Good morning, counsel.

23 Who is on the line for plaintiff today?

24 MR. BOVE: Yes, Your Honor. This is Jeff Bove.

25 I have with me in my office Jim Badke from Ropes & Gray. I  
have Gabrielle Ciuffrida on the phone from Ropes & Gray.  
Also present with me is Jaclyn Mason, my associate at  
Connolly Bove. Dialing in from afar is Mary Bourke.

THE COURT: Good morning.

For defendant.

MR. ROVNER: Your Honor, this is Phil Rovner

1 fact that the document was repeatedly scheduled on the log.

2 In this instance, the document scheduled did  
3 appear in the files of the prosecuting attorney, Mr. Giblin.

4 Mr. Giblin was permitted to testify generally,  
5 so as not to vitiate privilege, that in fact it was his  
6 practice, obviously, to review invention disclosures because  
7 that is the first step in considering a patent application.

8 Indeed, we believe and assert that that is  
9 exactly what has occurred here. The Federal Circuit has  
10 indicated in the Spalding case at 203 F.3d 800 that these  
11 types of records are routinely privileged, almost  
12 presumptively privileged. And of course we certainly assert  
13 the Spalding case in support of this position.

14 I wish to emphasize that to the best of our  
15 knowledge, each fact asserted in the invention record has  
16 otherwise been produced in this litigation. In other words,  
17 they are not being deprived of any facts by reason of the  
18 proper assertion of privilege in these circumstances.

19 What is particularly troubling is that Baxter  
20 attempted to mark the invention disclosure during the  
21 deposition of Mr. Giblin in an effort to use that document.  
22 We do not think that is a proper use of a document under  
23 Paragraph 12 of this Court's protective order. But that is  
24 an aside.

25 The relief that we are seeking is return of the

1 document under the protective order. We have offered to  
2 supply an affidavit in order to substantiate each of the  
3 elements of the privilege should the Court deem such  
4 appropriate.

5 And that is our essential position at this point  
6 in time.

7 THE COURT: Mr. Gilliland, if you have the  
8 information -- let me back up for a second. Mr. Bove, I am  
9 sorry, I didn't recognize your name when it was initially  
10 pronounced. Obviously, I know who you are.

11 Is it the case that there was data missing from  
12 the document in question? Are you asserting that that data  
13 is in possession of Baxter?

14 MR. BOVE: Absolutely, Your Honor.

15 THE COURT: Mr. Gilliland, why don't you reply,  
16 specifically starting out addressing that assertion.

17 MR. GILLILAND: Thank you, Your Honor. Yes.

18 I believe that it is correct that in the lab  
19 notebooks of another inventor, the test data exists which in  
20 this case, Your Honor, it is a case about a way of refining  
21 immunoglobulins from blood. And it is a process patent.  
22 And the alleged invention is that a factor called  
23 anticomplement activity, which is bad for you, is caused by  
24 a solvent detergent treatment used during the process --

25 THE COURT: That is a lot of details that I

1 don't need, I don't think, at this point, to resolve this  
2 dispute.

3 What I am trying to get at is, let's just assume  
4 for purposes of argument for a moment that I have concluded  
5 that the question is a close call. And that being the case,  
6 if you already have the information that you seek, why  
7 should this Court, under the circumstances of a close call,  
8 make the call in your favor?

9 MR. GILLILAND: Here is the answer to that  
10 question, Your Honor.

11 We need to try to determine why that information  
12 that did not get into the patent application, and Dr. Alonso  
13 is the named inventor, and he has in his memo this  
14 particular document, that data, obviously, without that memo  
15 from the inventor, it's going to be difficult, if not  
16 impossible, for us to ask the question and to determine what  
17 happened to that data and why it was omitted. It is in the  
18 lab notebook of another inventor --

19 THE COURT: Let me interrupt for a second. What  
20 issue in the case does the answer to that question go to?  
21 Is there some type of inequitable conduct claim here? What  
22 does that go to?

23 MR. BOVE: Your Honor, there is no inequitable  
24 conduct claim presently in this case.

25 THE COURT: Mr. Gilliland, what issue is that

1 conduct such as would vitiate the privilege. We think it is  
2 pretty clear this document ought to be returned and no use  
3 made of it.

4 THE COURT: I am going to order the document  
5 returned, and further, that the document itself, not data,  
6 because Mr. Bove concedes you already have the data, Baxter,  
7 but within the context of the litigation the document itself  
8 with reference to the data may not be used.

9 I am going to make that order without prejudice,  
10 Mr. Gilliland, to you asking the Court to revisit this issue  
11 should you deem it appropriate within the context of perhaps  
12 a later asserted inequitable conduct defense.

13 MR. GILLILAND: Thank you, Your Honor. I think  
14 what I understand the Court's ruling to be, that Baxter will  
15 return all copies it has of the document but Mr. Bove and  
16 his firm will hold onto their copies.

17 THE COURT: Yes.

18 MR. GILLILAND: Thank you. We will do that.

19 THE COURT: Next issue for Baxter was the  
20 plaintiff's deficient document production.

21 MR. GILLILAND: Your Honor, there are a couple  
22 of issues regarding discovery. I will try to hit a couple  
23 of them, because we are right in the middle of depositions.  
24 There is one occurring after this call up there in Delaware.

25 I will just hit a hit a couple of top-line

**Donna C. Hallowell**

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**From:** ded\_nefreply@ded.uscourts.gov  
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District of Delaware

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Minute Entry for proceedings held before Judge Gregory M. Sleet: Discovery (first) Telephone Conference held on 8/17/2006. (Court Reporter Kevin Maurer.) (mmm)

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Jeffrey B. Bove jbove@cblh.com, dhallowell@cblh.com; dkt@cblh.com

Philip A. Rovner provner@potteranderson.com, mstackel@potteranderson.com; nmcmnamin@potteranderson.com; iplitigation@potteranderson.com

Susan M. Spaeth smspaeth@townsend.com, avmorjig@townsend.com

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